

STATE OF MAINE
OFFICE OF SECURITIES
121 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0121

IN RE:

Van Ness Investments, LLC /
Linda G. Van Ness

CONSENT ORDER
11-7849

This is an order of the Securities Administrator issued under 32 M.R.S. §16412 with the consent of Van Ness Investments, LLC (CRD #141723) ("VNI") and Linda G. Van Ness ("Van Ness") (CRD #2591831). VNI and Van Ness admit the findings of fact and conclusions of law set forth below, agree to the entry of this Consent Order, and waive their right to a hearing and to a judicial review.

I. FINDINGS OF FACT

1. VNI is an investment adviser with its principal place of business at 13 Swan Street, Portland, Maine 04102. Van Ness is the owner and sole investment adviser representative of VNI.
2. On or about March 19, 2009, VNI and Van Ness entered into a Consent Agreement with the Maine Office of Securities ("the Office") for having acted as an investment adviser and investment adviser representative, respectively, in Maine without being licensed or exempt from licensing from about August 2007 to March 2009.
3. By entering into the Consent Agreement, VNI and Van Ness agreed (1) to comply with all licensing and other legal requirements governing persons acting as investment advisers and investment adviser representatives in the State of Maine at all times from the date of the Consent Order, and (2) that failure by VNI or Van Ness to adhere to the above conditions constitutes grounds for revocation of VNI's investment adviser license and Van Ness's investment adviser representative license. VNI and Van Ness were fined the sum of \$510 and both were licensed on March 23, 2009.
4. At all relevant times subsequent to the March 2009 Consent Agreement, VNI has been licensed in Maine as an investment adviser, and Van Ness has been licensed in Maine as an investment adviser representative for VNI.
5. At all times relevant to this Consent Order, VNI had four clients, one of whom lived in Great Britain ("Client P").

6. Van Ness regularly accessed the bank or brokerage accounts of at least three clients by using the client's username, password, security questions, and site key to: (1) log in as the client; (2) direct money from the client's investment account to the client's checking account; (3) request checks for payment of client personal expenses; and (4) request checks payable to VNI for monthly asset management fees.
7. Van Ness designated VNI's business address (which also is her home address) as the address of record for Client P's bank and brokerage accounts, thereby causing VNI to receive the sole copy of the statements for these accounts. Van Ness has claimed that she used VNI's address because the bank required a domestic address for the account and that she forwarded copies of Client P's statements to him on a quarterly basis; however, she could only produce two receipts for postage expenses to confirm this.
8. Van Ness caused at least \$140.00 in overdraft and insufficient fund fees in Client P's checking account. Van Ness has stated that the fees were not reimbursed to Client P pursuant to his verbal instructions.
9. Between December 28, 2010, and January 16, 2011, Van Ness received a total of \$59,500.00, from Client P. All of Client P's funds were deposited into VNI's checking account at Bank of America, which Van Ness also used as her personal checking account. Between January 5, 2011 and March 10, 2011, and at Client P's direction, Van Ness sent five wire transfers totaling \$45,860.78 to Client P in Great Britain and issued a check from VNI's checking account for \$6,000.00 payable to Client P's son in California.
10. While VNI's records reflect that Van Ness informed Client P that he had a remaining balance of at least \$7,081.41 from the \$59,500.00, the balance was not returned to Client P and instead was expended by Van Ness on personal and unrelated business expenses.
11. According to Van Ness, the expenditure of Client P's money was unintentional and resulted from her failure to track and monitor the remainder of Client P's funds during a period of illness associated with a chronic condition.
12. Client P subsequently passed away. At the Office's request, Van Ness has reimbursed Client P's estate \$6,777.17 (\$7,081.41 less the \$304.24 fee discussed in ¶ 13, below).
13. Van Ness deducted Client P's December 2010 management fee in the amount of \$304.24 from another client's account ("Client W"). Van Ness later explained that she was unaware that she had deducted Client P's management fee from Client W's account. At the request of the Office, Van Ness informed Client W of the overcharge and provided reimbursement.
14. At no point did VNI or Van Ness notify the Securities Administrator that VNI had custody of client funds and securities. Van Ness has stated that she did not realize VNI had custody.
15. At no time did VNI or Van Ness have an independent certified public accountant conduct an unannounced examination of client funds and securities for which VNI had custody.

16. As of November 15, 2011, VNI had a negative net worth and no bond subject to client claims.

II. CONCLUSIONS OF LAW

1. The Maine Uniform Securities Act grants authority to the Securities Administer to take disciplinary action against a licensee who has engaged in “unlawful, dishonest, or unethical practices in the securities, commodities, investment, franchise, banking, finance or insurance business.” 32 M.R.S. § 16412(4)(M). Under this authority, the Securities Administrator can order several types of penalties and conditions, including revoking the license of a licensee and imposing conditions and limits on licenses if the Securities Administrator finds that the order is in the public interest. 32 M.R.S. §§ 16412(2) & (3).
2. The Maine Investment Adviser Licensing Rule defines “custody” to mean “holding, directly or indirectly, client funds or securities, or having the authority to obtain possession of them or having the ability to appropriate them.” Rule Ch. 515 §§ 11(1)(A), 12(6).
3. By depositing Client P’s funds into VNI’s checking account and accessing client accounts as described above, VNI and Van Ness had custody of client funds and securities.
4. Under Rule Chapter 515 §§ 11(2), 14(14), it is an unlawful, dishonest, or deceptive practice for an investment adviser or investment adviser representative to have custody of client funds or securities without complying with certain requirements specified in Rule Chapter 515, including:
 - a. Promptly notifying the Securities Administrator on Form ADV that the adviser has or may have custody, Rule Ch. 515 § 11(3);
 - b. Having account statements sent to each client at least quarterly, Rule Ch. 515 § 11(6);
 - c. Unless quarterly account statements are sent to each client directly by a qualified custodian, having an independent certified public accountant verify all client funds and securities at least annually, Rule Ch. 515 § 11(6)(B)(2); and
 - d. Maintaining at all times a net worth (or combination of net worth and bonding subject to client claims) of at least \$35,000, Rule Ch. 515 §§ 12, 13.
5. By having custody of client funds and securities without complying with the Rule Chapter 515 requirements set forth above, VNI and Van Ness engaged in unlawful, dishonest or unethical practices and may be disciplined under 32 M.R.S. § 16412(4)(M).
6. This Consent Order is in the public interest because it will tend to deter Van Ness and others from engaging in similar conduct in the future and will foster public confidence in the securities industry.

ORDER

1. VNI's investment adviser license is revoked.
2. VNI and Van Ness shall reimburse the Estate of Client P the amount of \$140.00 incurred in overdraft and insufficient fund fees in Client P's Bank of America checking account.
3. Van Ness's investment adviser representative license is revoked. Van Ness may reapply to become licensed in Maine as an agent or investment adviser representative no earlier than two years from the date that this Consent Order is signed by the Securities Administrator.
4. Should Van Ness seek licensure as an investment adviser representative in Maine, Van Ness shall be required to comply with the examination requirements set forth in Rule Chapter 515 § 10(1) without credit for any examinations taken prior to her license revocation.
5. Should Van Ness seek licensure as an agent or investment adviser representative in Maine, Van Ness shall be required to re-attend the seminar conducted by the Securities Administrator for agent and investment adviser representative applicants.
6. Should Van Ness subsequently become licensed as an agent or investment adviser representative in Maine, Van Ness shall be subject to the following conditions and restrictions for a period of two years from the date of licensure:
 - a. Van Ness may only be associated with a broker-dealer or investment adviser in which Van Ness has no direct or indirect ownership or control;
 - b. Van Ness may not act in any principal, supervisory, or managerial capacity for a broker-dealer or investment adviser;
 - c. Van Ness may not have custody of client funds or securities;
 - d. Van Ness may not exercise discretionary trading authority;
 - e. Van Ness shall work in the same office as her supervisor;
 - f. Any broker-dealer and investment adviser with which Van Ness is associated shall assign as Van Ness's supervisor an appropriately Maine-licensed person approved in advance by the Office; and
 - g. Any other conditions the Securities Administrator deems appropriate at the time of licensure.

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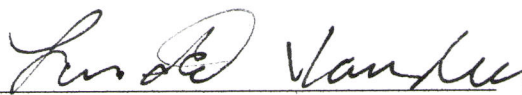
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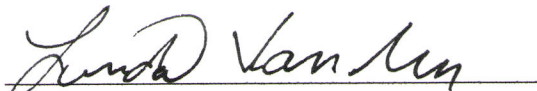
7. Except as set forth above, the Securities Administrator agrees to take no action adverse to VNI or Van Ness based solely on the same conduct addressed in this Consent Order. However, nothing in this Consent Order shall preclude the Securities Administrator from: (a) taking adverse action based at least in part on other conduct; (b) taking this Consent Order and the conduct described above into account in determining the proper resolution of any action based on other conduct; or (c) taking any and all available steps to enforce this Consent Order.

VNI and Van Ness, by signing below, admit the findings of fact and conclusions of law set forth above, agree to the entry of this Consent Order, and waive their right to a hearing and to judicial review.

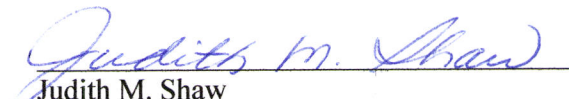
Date: February 7, 2012


Linda G. Van Ness, Owner
Van Ness Investments, LLC

Date: February 7, 2012


Linda G. Van Ness

Date: February 8, 2012


Judith M. Shaw
Securities Administrator